

PUBLIC CHAPTER NO. 170

HOUSE BILL NO. 200

By Representatives Odom, Ulysses Jones, Miller, Armstrong, Rinks, Mike Turner, Sontany, Borchert, Ferguson, Fraley, Litz, Favors, Gilmore, Fitzhugh, Towns, Larry Turner, Cooper, Shaw, Brown, Pitts, Hackworth, Kernell, Moore, Hood, Curtiss, Rowe, Bibb, Fincher, McDonald, Yokley, Curt Cobb, Sargent, Hawk, DuBois, Harrison, Williams, Eldridge, Baird, Harwell, Hensley, Mumpower, Shepard, Ford, Matheny, Casada, Sherry Jones, West, Maggart, Watson, Matlock, Todd, Winningham, Buck, Harmon, Tidwell, Bass, Phillip Johnson, Kevin Brooks, Overbey, McDaniel, Lois DeBerry, John DeBerry, Crider, Maddox, Pinion, Rowland, Hardaway, Jim Cobb, Tindell, Niceley, Strader, Harry Brooks, Dunn, Hill, Bell, Bone, Curtis Johnson, Dean, Lundberg, Lynn, Montgomery, Coleman, Pruitt, Lollar, McManus, Coley, Campfield, Swafford, Floyd, Gresham, McCormick and Mr. Speaker Naifeh

Substituted for: Senate Bill No. 161

By Senators Raymond Finney, Ketron, Norris, Woodson, Black, Johnson, Tracy, Haynes, Kilby, Tate, Lowe Finney, Harper, Burks, Crowe, Crutchfield, McNally, Herron, Marrero

AN ACT to amend Tennessee Code Annotated, Title 10, Chapter 7, Part 5; Title 39 and Title 47, Chapter 18, relative to identity theft deterrence.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known, and may be cited, as the "Credit Security Act of 2007".

SECTION 2. Tennessee Code Annotated, Section 47-18-2102, is amended by inserting the following definitions as appropriately designated subdivisions thereto:

() "Consumer report" has the meaning ascribed to that term by 15 U.S.C. § 1681a(d), as amended from time to time;

() "Consumer reporting agency" has the meaning ascribed to that term by 15 U.S.C. § 1681a(f), as amended from time to time;

SECTION 3. Tennessee Code Annotated, Title 47, Chapter 18, Part 21, is amended by inserting Sections 4 through 7 below as new, appropriately designated sections thereto.

SECTION 4.

(a) A Tennessee consumer may place a security freeze on the consumer report of such Tennessee consumer by making a request in writing by certified mail. Beginning on January 31, 2009, a credit reporting agency shall make available an electronic method for requesting a security freeze. A security freeze shall prohibit the consumer reporting agency from releasing the requesting party's consumer report or credit score relating to the extension of credit without the express authorization of the Tennessee consumer. Nothing in this section shall prevent a consumer reporting agency from advising a third party that a security freeze is in effect with respect to a particular consumer report.

(b) A consumer reporting agency shall place a security freeze on a consumer report no later than three (3) business days after receiving the written or electronic request from the Tennessee consumer.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the Tennessee consumer within ten (10) business days of placing the security freeze on the consumer report, and shall provide the Tennessee consumer with a unique personal identification number or password, other than the Tennessee consumer's federal social security number, to be used by the Tennessee consumer when providing authorization for the release of the consumer report for a specific period of time or for permanently removing the security freeze.

(d) If the Tennessee consumer wishes to allow the consumer report to be accessed for a specific period of time while a freeze is in place, the Tennessee consumer shall contact the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

(1) Proper identification;

(2) The unique personal identification number or password provided by the consumer reporting agency to the Tennessee consumer pursuant to this section; and

(3) The information requested by the consumer reporting agency about the period for which the consumer report is to be available.

(e) A consumer reporting agency shall develop procedures involving the use of telephone, the Internet, or other electronic method to receive and process a request from a Tennessee consumer to temporarily lift a freeze on a credit report pursuant to this section in an expedited manner. A consumer reporting agency may develop procedures involving the use of facsimile for this purpose.

(f) A consumer reporting agency shall comply with a request to temporarily lift a freeze previously placed on a consumer report no later than fifteen (15) minutes after receiving the request through an electronic contact method in accordance with this section and such request is

received between 6:00 a.m. and 9:30 p.m., seven (7) days per week, eastern or central standard or daylight time as applicable to the consumer. In requesting a temporary removal of the security freeze, a Tennessee consumer shall provide both of the following:

(1) Proper identification; and

(2) The unique personal identification number or password provided by the consumer reporting agency to the Tennessee consumer pursuant to this section.

(g) A consumer reporting agency is not required to temporarily lift a security freeze within the time provided in subsection (f) if:

(1) The consumer fails to meet the requirements of subsection (d); or

(2) The consumer reporting agency's ability to temporarily lift the security freeze within fifteen (15) minutes is prevented by:

(A) An act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena;

(B) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrence;

(C) Operational interruption including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption;

(D) Governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives;

(E) Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems; or

(F) Commercially reasonable maintenance of or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.

(h) If a third party requests access to a consumer report on which a security freeze is in effect and the Tennessee consumer does not allow the third party access to the consumer report, the third party may treat any applicable credit application made by the consumer as incomplete.

(i) If a Tennessee consumer requests a security freeze pursuant to this section, the consumer reporting agency shall disclose to the Tennessee consumer the process of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer report for a specific period of time while the security freeze is in place.

(j) Except as provided in subsections (d), (e), and (f), a security freeze shall remain in place until the Tennessee consumer requests that the security freeze be removed permanently. A consumer reporting agency shall permanently remove a security freeze no later than two (2) business days from the receipt of a request by the agency when a Tennessee consumer makes such a request by means involving the use of telephone, the Internet, or other electronic media as provided by the consumer reporting agency. In making such a request, the Tennessee consumer shall provide both of the following:

(1) Proper identification; and

(2) The unique personal identification number or password provided by the consumer reporting agency to the Tennessee consumer pursuant to this section.

(k) If a security freeze is in place, a consumer reporting agency shall not change a Tennessee consumer's name, date of birth, federal social security number, or address on a consumer report without providing at least thirty (30) days prior written notice to the Tennessee consumer at that consumer's last known address. Written notice to the Tennessee consumer is not required in order to make technical corrections to a Tennessee consumer's information, including name and street abbreviations, complete spellings, or transposition of numbers or letters.

(l) A consumer reporting agency may charge a Tennessee consumer a reasonable fee not to exceed seven dollars and fifty cents (\$7.50) for the placement of a security freeze. A consumer reporting agency may not charge a Tennessee consumer to temporarily lift a security freeze. A consumer reporting agency may charge a consumer a reasonable fee not to exceed five dollars (\$5.00) to permanently remove a security freeze, or to replace a personal identification number or password. A consumer reporting agency may not charge a Tennessee consumer to place or permanently remove a security freeze if that Tennessee consumer is a victim of identity theft as defined in § 47-18-2102 or other state of Tennessee law or federal law regarding identity theft and presents to the consumer reporting agency, at the time the request is made, a police report or other official document acceptable to the consumer reporting agency detailing the theft. Beginning on January 1, 2010, and on January 1 of each subsequent year, a consumer reporting agency may increase the fees set forth in this section based proportionally on changes to the Consumer Price Index of All Urban

Consumers, as determined by the United States Department of Labor, with fractional changes rounded to the nearest twenty-five cents (25¢).

(m) The provisions of this section, including the security freeze, do not apply to the use of a consumer report by the following:

(1) A person, or that person's subsidiary, affiliate, agent or assignee, if the Tennessee consumer has an account, contract, or debtor-creditor relationship with that person, for the purposes of reviewing the account, collecting the financial obligation of the consumer, fraud control or extending additional credit to the Tennessee consumer. For purposes of this subdivision, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;

(2) A subsidiary, affiliate, agent or assignee of a party or parties for whom a security freeze has been temporarily lifted pursuant to this section for the purpose of facilitating the extension of credit or other permissible use;

(3) Any person, including, but not limited to, a law enforcement entity, collections officer or private collection agency, acting pursuant to a court order, warrant or subpoena authorizing the use of the consumer report, or acting pursuant to a civil investigative demand or request for consumer protection information;

(4) Any department or division of the state that is acting to investigate a child support case, Medicaid or TennCare fraud, delinquent taxes or assessments, unpaid court orders or settlements of any sort or type, or to fulfill of any of their statutory or other duties;

(5) A Tennessee consumer's use of information for the purposes of prescreening as provided by the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, as amended from time to time;

(6) Any person for the purpose of providing a credit file monitoring subscription service to which the Tennessee consumer has subscribed;

(7) A consumer reporting agency for the sole purpose of providing a Tennessee consumer with a copy of the consumer report upon the Tennessee consumer's request;

(8) Any person or entity for the purpose of setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes;

(9) A pension plan acting to determine the Tennessee consumer's eligibility for plan benefits or payments authorized by law or to investigate fraud;

(10) Any law enforcement entity or its agent acting to investigate a crime or civil law violation, conduct a criminal background check, conduct a presentence investigation in a criminal matter or use the information for supervision of a paroled offender;

(11) A licensed hospital with which the Tennessee consumer has or had a contract or a debtor-creditor relationship for the purpose of reviewing the account or collecting the financial obligation owing for the contract, account, or debt; or

(12) An attorney at law duly licensed in Tennessee representing any person, subsidiary, affiliate, agent, assignee, department, division, or other entity to whom the provisions of this section do not apply.

(n) The following entities are not subject to the requirements of this section; provided, however, that each such entity shall be subject to any security freeze placed on a consumer report by a consumer reporting agency from which it obtains information:

(1) A consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or multiple consumer credit reporting agencies, and does not maintain a permanent data base of credit information from which new consumer credit reports are produced. However, a consumer reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer reporting agency;

(2) A check services or fraud prevention services company, which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payments;

(3) A deposit account information service company, which issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a Tennessee consumer, to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution; and

(4) A consumer reporting agency's database or file which consists of information concerning, and used for, one or more of

the following: criminal record information, fraud prevention or detection, personal loss history information, and employment, tenant, or individual background screening.

(o) Exclusive of all other private and non-governmental remedies that may be imposed, any person who fails to comply with any requirement imposed under this section with respect to any Tennessee consumer is liable to that Tennessee consumer in an amount equal to the sum of:

(1)

(A) Any ascertainable losses sustained by the Tennessee consumer as a result of the failure or damages of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000), whichever is greater, in addition to any other governmental remedies available at law; or

(B) In the case of liability of a natural person for obtaining a consumer report under false pretenses without a permissible purpose, ascertainable losses sustained by the consumer as a result of the failure or one thousand dollars (\$1,000), whichever is greater, in addition to any other governmental remedies available at law;

(2) Such amount of punitive damages as the court may allow in a private right of action or other non-governmental action; and

(3) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

(p) Any person who obtains a consumer report, requests a security freeze, requests the temporary lift of a freeze, or the removal of a security freeze from a consumer reporting agency under false pretenses or in an attempt to violate federal or state law shall be liable to the consumer reporting agency for ascertainable losses sustained by the consumer reporting agency or one thousand dollars (\$1,000), whichever is greater, in addition to any other governmental remedies available at law.

(q) In addition to any other governmental remedies available at law, any person who is negligent in failing to comply with any requirement imposed under this section with respect to any Tennessee consumer is liable to that Tennessee consumer in an amount equal to the sum of:

(1) Any ascertainable losses sustained by the Tennessee consumer as a result of the failure; and

(2) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorneys' fees as determined by the court.

(r) Upon a finding by the court that an unsuccessful, non-governmental pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorneys' fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

(s) Notwithstanding any other provision of this act, the sole power to enforce violations of section 4(f) shall be with the attorney general and reporter.

(t) Except as otherwise specified, this section shall take effect September 1, 2008.

SECTION 5. At any time that a Tennessee consumer is required to receive a summary of rights required by 15 U.S.C. §1681g(d) of the federal Fair Credit Reporting Act, as amended from time to time, the Tennessee consumer shall also be provided with the following prominent, clear and conspicuous notice in at least twelve (12) point type:

Tennessee Consumers Have the Right to Obtain a Security Freeze

You have a right to place a "security freeze" on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. A security freeze must be requested in writing by certified mail or by electronic means as provided by a consumer reporting agency. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. If you are actively seeking a new credit, loan, utility, or telephone account, you should understand that the procedures involved in lifting a security freeze may slow your applications for credit. You should plan ahead and lift a freeze in advance of actually applying for new credit. When you place a security freeze on your credit report, you will be provided a personal identification number or password to use if you choose to remove the freeze on your credit report or authorize the release of your credit report for a period of time after the freeze is in place. To provide that authorization you must contact the consumer reporting agency and provide all of the following:

- (1) The personal identification number or password;
- (2) Proper identification to verify your identity; and
- (3) The proper information regarding the period of time for which the report shall be available.

A consumer reporting agency must authorize the release of your credit report no later than fifteen (15) minutes after receiving the above information.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account, that requests information in your credit report for the purposes of fraud control, or, reviewing or collecting the account. Reviewing the account includes activities related to account maintenance.

You should consider filing a complaint regarding your identity theft situation with the Federal Trade Commission and the Tennessee department of commerce and insurance, division of consumer affairs, either in writing or via their websites.

You have a right to bring civil action against anyone, including a consumer reporting agency, who improperly obtains access to a file, misuses file data, or fails to correct inaccurate file data.

Unless you are a victim of identity theft with a police report, or other official document acceptable to a consumer reporting agency to verify the crimes, a consumer reporting agency has the right to charge you up to seven dollars and fifty cents (\$7.50) to place a freeze on your credit report, but may not charge you to temporarily lift a freeze on your credit report. A consumer reporting agency may charge a consumer a reasonable fee not to exceed five dollars (\$5.00) to permanently remove a security freeze, or to replace a personal identification number or password. A consumer reporting agency may increase these fees annually based on changes to a common measure of consumer prices. A consumer reporting agency may not charge a Tennessee consumer to place or permanently remove a security freeze if that Tennessee consumer is a victim of identity theft as defined in Tennessee law or federal law regarding identity theft and presents to the consumer reporting agency, at the time the request is made, a police report or other official document acceptable to the consumer reporting agency detailing the theft.

SECTION 6.

(a) On and after January 1, 2008, any person, nonprofit or for profit business entity in this state, including but not limited to any sole proprietorship, partnership, limited liability company, or corporation, engaged in any business, including but not limited to health care, that has obtained a federal social security number for a legitimate business or governmental purpose shall make reasonable efforts to protect that social security number from disclosure to the public. Such social security numbers shall not:

- (1) Be posted or displayed in public;

(2) Be required to be transmitted over the Internet, unless the Internet connection used is secure or the social security number is encrypted;

(3) Be required to log onto or access an Internet website, unless used in combination with a password or other authentication device; or

(4) Be printed on any materials mailed to a consumer, unless such disclosure is required by law, or the document is a form or application.

(b) The requirements established pursuant to subsection (a)(1)-(4) do not apply to the disclosure of a federal social security number by an entity so long as such disclosure is for a legitimate business or governmental purpose and occurs pursuant to the terms of a business or governmental contract or other lawful legal obligation.

(c) On and after January 1, 2009, a violation of subsection (a) is a Class B misdemeanor. Each violation of subsection (a) shall constitute a separate offense.

(d) In addition to the criminal offense created pursuant to subsections (a) and (b), on and after January 1, 2009, it is also a civil violation of this part subject to the penalty provided in this part for any person, any nonprofit or for profit business entity in this state, including but not limited to any sole proprietorship, partnership, limited liability company, or corporation, engaged in any business, including but not limited to health care, to violate any of the prohibitions of subdivision (a)(1)-(4).

(e) Any state agency or nonprofit or for profit business entity engaged in the provision of health care services under Title XIX, including determining eligibility for Title XIX services, shall be exempted from the requirements of subsections (a) and (b).

(f) The comptroller of the treasury shall review current state and local government policies and practices as they relate to protecting social security numbers from disclosure to the public, and provide appropriate recommendations to the general assembly by February 1, 2008.

SECTION 7. Tennessee Code Annotated, Section 47-18-2105(b), is amended by deleting the current language in its entirety and by substituting instead the following:

(b) The action may be brought in the chancery or circuit court in Davidson County or in a court of competent jurisdiction where the alleged violation of this part, identity theft, unfair, misleading or deceptive act or practice took place or is about to take place or in the county in which such person resides, has such person's principal place of business, conducts, transacts or has transacted business or, if the person cannot be found in

any of the foregoing locations, in the county in which such person can be found.

SECTION 8. Tennessee Code Annotated, Section 47-18-2105(e), is amended by deleting the current language in its entirety and by substituting instead the following:

(e) In any successful action commenced under this part, any ascertainable loss that a person has incurred as a result of a violation of this part, including but not limited to the identity theft or misleading, deceptive or unfair practices used to engage in violations of this part shall be recovered as restitution for each such person. The person shall also be awarded statutory interest on that ascertainable loss.

SECTION 9. Tennessee Code Annotated, Section 47-18-2105(g), is amended by deleting the current language in its entirety and by substituting instead the following:

(g) No court costs, litigation costs, discretionary costs or attorneys' fees shall be taxed or awarded against the state in action commenced under this part or under the Tennessee Consumer Protection Act of 1977.

SECTION 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 11. Except as otherwise specified above, this act shall take effect on January 1, 2008, the public welfare requiring it.

PASSED: April 30, 2007


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


RON RAMSEY, SPEAKER
SENATE OF THE SENATE

APPROVED this 15th day of May 2007



PHIL BREDESEN, GOVERNOR